



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Barbara A. Gilchrest, Mina Yaar and Mark Eller

Application No.: 09/632,748                      Group: 1647

Filed: August 4, 2000                      Examiner: S. Gucker

Confirmation No.: 2365

For: METHODS OF INDUCING HAIR GROWTH AND COLORATION

CERTIFICATE OF MAILING OR TRANSMISSION	
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PETITION FROM REQUIREMENT FOR RESTRICTION UNDER 37 CFR § 1.144

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Commissioner for Patents  
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Sir:

Applicants petition the Director to reconsider and withdraw the Supplemental Restriction in the Office Action made final mailed from the United States Patent and Trademark Office on 14 July 2003, for the reasons set forth below. In the Office Action, Claims 35 and 38 were withdrawn from consideration as being "directed to a non-elected invention." The Examiner further states:

Newly submitted claims 35 and 38 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: none of the sequences recited as SEQ ID NOs were elected as the species to be examined in Applicants' election, Paper No. 11, filed 8/30/02. The species elected was the peptide comprising the amino acid sequence lysine-glycine-alanine (KGA). If

Applicants wish to have claims narrower in scope searched and examined,  
Applicants may file a divisional application.

The Examiner did not state reasons for holding that the inventions as claimed in Claims 35 and 38 are distinct or independent from the inventions of the pending claims under consideration, as is standard practice according to the *Manual of Patent Examining Procedure* (MPEP) sections 821.03 and 816.

Applicants have not been given an opportunity to request that the Examiner reconsider the Supplemental Restriction. Because the Office Action was made final, the Supplemental Restriction became final.

In response to the Restriction Requirement of 21 June 2003, which included an election of species, Applicants elected the claims of Group VII (original claims 10, 11 and 12), and the species "peptide comprising KGA." Because the first two species set forth in the Restriction Requirement of 21 June 2003 are peptides, it is assumed that species c - e are also meant to be peptides, specifically:

- c. a peptide consisting of amino acid sequence SEQ ID NO:4;
- d. a peptide consisting of amino acid sequence SEQ ID NO:9; and
- e. a peptide consisting of amino acid sequence SEQ ID NO:10.

Applicants submit that the embodiments of the invention as claimed in Claims 35 and 38 are not distinct or independent from the embodiments of the invention as claimed in the claims currently under examination. The withdrawn claims are not directed to subject matter distinct or independent from subject matter already considered.

The amino acid sequences of SEQ ID NOs 4, 9 and 10 are as follows:

SEQ ID NO:4 – CVGSNKGAIC

SEQ ID NO:9 – CATDIKGAEC

SEQ ID NO:10 – CKGAIC

Each of the species c - e as set forth by the Examiner is a peptide comprising KGA. Claims 35 and 38 cannot be said to require a new and burdensome search; searches of prior art relating to the subject matter of Claims 35 and 38 have been done already.

Applicants request that Claims 35 and 38 be examined together with the other pending claims. Please charge any petition fees that may be due in this matter to Attorney's Deposit Account No. 08-0380. A copy of this paper is enclosed for accounting purposes.

Respectfully submitted,

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